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8 BEFORE THE DIRECTOR OF THE
DEPARTMENT OF MANAGED HEALTH CARE
9 OF THE STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

11 GE DENTAL AND VISION d/b/a
Smilesaver, formerly known as GE
12 WELLNESS PLAN DENTAL AND
VISION and GREATER CALIFORNIA
13 DENTAL PLAN,

14 Respondent.

OAH No.

Enforcement Matter No. 02-074

**ACCUSATION TO ASSESS
ADMINISTRATIVE PENALTY**

15
16 **INTRODUCTION**

17 This case is brought pursuant to the Knox-Keene Health Care Service Plan Act of
18 1975, as amended (California Health and Safety Code section 1340 *et seq.*) (the "Act") and
19 is based on the failure of GE Dental and Vision (the "Respondent") to file with the Director
20 of the Department of Managed Health Care (the "Department") its January 1, 2001 contract
21 with Signature Financial Marketing, Inc., as required by Health and Safety Code section
22 1352 and California Code of Regulations, title 28, section 1300.51 Exhibit F-2. The case is
23 also based on Respondent's failure to respond to the Department's three requests for
24 information about its agreement with General Electric which the Department made during
25 its 2000 financial examination of Respondent. (See Health & Saf. Code § 1382 and Cal.
26 Code of Regs., tit. 28, § 1300.82).

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FILED
JAN 20 2004

DEPARTMENT OF MANAGED HEALTH CARE

By Kyra Harbo-Kemp
Filing Clerk

1 **PARTIES**

2 1. G. Lewis Chartrand (hereinafter the "Complainant") is the General Counsel
3 for the Department of Managed Health Care. The Complainant brings this Accusation
4 solely in his official capacity as General Counsel for the Department.

5 2. At all times pertinent to the allegations herein, the Respondent has been a
6 health care service plan, as defined by Health and Safety Code section 1345, subdivision (f),
7 and is subject to the regulatory provisions of the Act. The Respondent is the holder of a
8 specialized health care service plan license number 933-0136, which was issued on
9 January 28, 1981, by the Commissioner of the Department of Corporations, predecessor to
10 the Director of the Department of Managed Health Care.¹ The Respondent's principal
11 corporate office is located at 30851 Agoura Road, Suite 100, Agoura Hills, California
12 91301-4343.

13 3. Respondent is a wholly owned subsidiary of Signature Financial Marketing,
14 Inc. Signature Financial Marketing, Inc.'s ultimate parent corporation is General Electric
15 Company ("General Electric").
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17 **JURISDICTION**

18 4. This Accusation is brought before the Director of the Department of Managed
19 Health Care (hereinafter the "Director") under the following provisions of the Act and the
20 rules and regulations promulgated thereunder at California Code of Regulations, title 28.

21 5. The Knox-Keene Act was enacted in 1975 to provide state regulation of health
22 care service plans. The Act was amended in 1999 to create the Department of Managed
23 Health Care within the California Business, Transportation, and Housing Agency. The
24 Department has charge of the execution of the laws of the state relating to health care

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27 ¹ Effective July 1, 2000, the Department of Managed Health Care succeeded to all duties,
28 powers, responsibilities, and jurisdiction of the Department of Corporations as they related
to Corporations' Health Plan Program, health care service plans and the health care service
plan business. (See Health & Safety Code § 1341.9.)

1 service plans. Health and Safety Code section 1341 vests the Director with the
2 responsibility for the administration and enforcement of the provisions of the Act and Rules.

3 6. Health and Safety Code section 1386, subdivision (a) authorizes the Director
4 to take disciplinary action against a health care service plan, including but not limited to, the
5 assessment of administrative penalties against the plan, if the Director determines, after
6 appropriate notice and opportunity to be heard, that the plan has committed any of the acts
7 or omissions which constitute grounds for disciplinary action set forth in the Act and Rules.

8 7. Health and Safety Code section 1386, subdivision (b)(6) states:

9 [T]he following acts or omissions constitute grounds for disciplinary
10 action by the director . . . [¶] (6) The plan has violated or attempted to
11 violate, or conspired to violate, directly or indirectly, or assisted in or
12 abetted a violation or conspiracy to violate any provision of this chapter
13 or any rule or regulation adopted by the director pursuant to this chapter.

12 8. Health and Safety Code section 1351 provides that:

13 Each application for licensure as a health care service plan or
14 specialized health care service plan under this chapter shall be verified
15 by an authorized representative of the applicant, and shall be in a form
16 prescribed by the department. Such application shall be accompanied
17 by the fee prescribed by subdivision (a) of Section 1356 and shall set
18 forth or be accompanied by each and all of the following: . . . ¶ (o)
19 Evidence of adequate insurance coverage or self-insurance to respond
20 to claims for damages arising out of the furnishing of health care
21 services; . . . ¶ (p) Evidence of adequate insurance coverage or self-
22 insurance to protect against losses of facilities where required by the
23 director. . . . ¶ (q) If required by the director by rule pursuant to Section
24 1376, a fidelity bond or a surety bond in the amount prescribed. . . .
25 ¶ (r) Evidence of adequate workmen's compensation insurance coverage
26 to protect against claims arising out of work-related injuries that might
27 be brought by the employees and staff of a plan against the plan.

21 9. Health and Safety Code section 1352, subdivision (a) provides, in relevant
22 part, that:

23 A licensed plan shall, within 30 days after any change in the
24 information contained in its application, other than financial or
25 statistical information, file an amendment thereto in the manner the
26 director may by rule prescribe setting forth the changed information.

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1 10. Health and Safety Code section 1382, subdivisions (c) and (d) provide, in
2 relevant part, that:

3 (c) Reports of all examinations shall be open to public inspection,
4 except that no examination shall be made public, unless the plan has
5 had an opportunity to review the examination report and file a
6 statement or response within 45 days of the date that the department
7 provided the report to the plan. After reviewing the plan's response,
8 the director shall issue a final report that excludes any survey
9 information, legal findings, or conclusions determined by the
10 director to be in error, describes compliance efforts, identifies
11 deficiencies that have been corrected by the plan on or before the
12 time the director receives the plan's response, and describes remedial
13 actions for deficiencies requiring longer periods for the remedy
14 required by the director or proposed by the plan. . . [¶] (d) If
15 requested in writing by the plan, the director shall append the plan's
16 response to the final report issued pursuant to subdivision (c). . . .

17 11. California Code of Regulations, title 28, section 1300.45, subdivisions (c)(1)
18 and (2) state, in relevant part:

19 [¶] (1) An "affiliate" of a person is a person controlled by, under
20 common control with, or controlling such person. . . . [¶] (2) A
21 person's relationship with another person is that of an "affiliated
22 person" if such person is . . . the holder of 5% or more of its
23 outstanding equity securities; or who has any such relationship with an
24 affiliate of such person. An affiliate is also an affiliated person.

25 12. California Code of Regulations, title 28, section 1300.51, Exhibit F-2,
26 subdivisions (a) and (b) state, in relevant part:

27 a. Contracts with Affiliated Persons, Principal Creditors and
28 Providers of Administrative Services. Persons to Be Identified.

 Attach [to the license application] as Exhibit F-2-a, a list
identifying each individual or entity who is a party to a contract
with applicant, if . . . any such party is an Affiliated Person [as
defined by Rule 1300.45(c)] . . . of the applicant. . . .

 b. Copies of Contracts.

 Attach as Exhibit F-2-b, a copy of each contract . . . identified in
Item F-2-a. . . .

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1 13. California Code of Regulations, title 28, section 1300.82 states:

2 Regular and additional or nonroutine examinations conducted by the
3 Department pursuant to Section 1382 will ordinarily be commenced
4 on an unannounced basis. To the extent feasible, deficiencies noted
5 will be called to the attention of the responsible officers of the
6 company under examination during the course of the examination,
7 and in that event the company should take the corrective action
8 indicated. When deemed appropriate, the company will be advised
9 by letter of the deficiencies noted upon the examination. If the
10 deficiency letter requires a report from the company, such report
11 must be furnished within 15 days or such additional time as may be
12 allowed.

13 14. As described in detail below, the Respondent is subject to disciplinary action
14 and the assessment of an administrative penalty pursuant to Health and Safety Code section
15 1386, subdivision (a), for multiple violations of Health and Safety Code section 1352 and
16 California Code of Regulations, title 28, sections 1300.51 Exhibit F-2 and 1300.82.

17 FACTUAL ALLEGATIONS

18 15. In late 2000, the Department conducted a routine financial examination of
19 Respondent. During the financial examination, the Department's examiner discovered that
20 Respondent had delegated to General Electric the responsibility of obtaining and
21 maintaining the insurance coverage which Respondent is required to maintain as a condition
22 of its health care service plan license.

23 16. The Department's examiner was unable to locate a written agreement between
24 Respondent and General Electric which memorialized General Electric's obligation to
25 maintain Respondent's insurance coverage.

26 17. On July 10, 2001, the Department issued its Preliminary Report of the routine
27 financial examination. In the Preliminary Report, the Department requested that Respondent
28 provide the Department with the date on which Respondent filed a copy of the agreement
with General Electric. Respondent was required to respond to the Preliminary Report within
45 days of the date that the Preliminary Report was issued.

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1 18. On August 31, 2001, Respondent filed its response to the Preliminary Report.
2 Respondent failed to respond to the Department's request for the date Respondent filed its
3 agreement with General Electric with the Department.

4 19. On January 4, 2002, the Department issued its Final Report of the routine
5 financial examination. The Department again requested that Respondent provide it with the
6 date Respondent filed its agreement with General Electric with the Department. Respondent
7 was required to respond to the Final Report within 30 days of the date the Final Report was
8 issued.

9 20. Respondent again failed to respond to this request.

10 21. On April 10, 2002, the Department sent a letter to Respondent requesting, for
11 the third time, that Respondent provide the Department with the date it filed its agreement
12 with General Electric with the Department. Respondent was required to respond to this
13 letter within 30 days.

14 22. For the third time, Respondent failed to respond to this request.

15 23. On September 5, 2002, the Department issued a subpoena duces tecum
16 ordering Respondent to produce its agreement with General Electric.

17 24. On October 3, 2002, Respondent produced a copy of a contract, entered into
18 between Respondent and Signature Financial Marketing, Inc. ("SFM"), in which SFM
19 promises to maintain and obtain insurance on behalf of Respondent, effective January 1,
20 2001.

21 25. This contract states that SFM shall obtain and maintain all of Respondent's
22 required insurance coverage through an arrangement with SFM's and Respondent's ultimate
23 parent, General Electric. This contract also states that whether or not SFM maintains a
24 relationship with General Electric, SFM will obtain and maintain all required insurance
25 coverage for Respondent.

26 26. Respondent formally filed its contract with SFM with the Department on
27 October 15, 2002.

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1 **FIRST CAUSE FOR DISCIPLINE**
2 **RESPONDENT FAILED TO FILE AN AMENDMENT TO ITS**
3 **LICENSE APPLICATION, AS REQUIRED BY HEALTH AND SAFETY**
4 **CODE SECTION 1352 AND CALIFORNIA CODE OF REGULATIONS,**
5 **TITLE 28, SECTION 1300.51 EXHIBIT F-2.**

6 27. The Respondent is subject to the assessment of an administrative penalty for
7 its violation of Health and Safety Code section 1352, subdivision (a), and California Code of
8 Regulations, title 28, section 1300.51 Exhibit F-2. SFM is Respondent's parent corporation,
9 and so, is an "affiliate" of Respondent, as defined by California Code of Regulations, title
10 28, section 1300.45, subdivision (c). Thus, Respondent was required to file its contract with
11 SFM with the Department. (Cal. Code Regs., tit. 28, § 1300.51 Exhibit F-2; see Health &
12 Saf. Code § 1352(a).)

13 28. Respondent was also required to file its contract with SFM, and a description
14 of its delegation of its responsibility to obtain and maintain the required insurance coverage
15 to SFM, with the Department as an amendment to its license application within 30 days after
16 it entered into the contract. (See Health & Saf. Code § 1352(a).)

17 29. Respondent entered into the contract January 1, 2001, but did not file it with
18 the Department until October 15, 2002.

19 **SECOND CAUSE FOR DISCIPLINE**
20 **RESPONDENT FAILED TO RESPOND TO THE DEPARTMENT'S**
21 **REQUESTS FOR INFORMATION, AS REQUIRED BY CALIFORNIA**
22 **CODE OF REGULATIONS, TITLE 28, SECTION 1300.82.**

23 30. The Respondent is subject to the assessment of an administrative penalty for
24 its violation of California Code of Regulations, title 28, section 1300.82, when Respondent
25 failed to respond to the Department's three requests for the date Respondent filed its
26 agreement with General Electric with the Department, as follows:

- 27 a. Respondent was required to file this information within 45 days of the
28 date the Department issued its Preliminary Report;
- b. Respondent was required to file this information within 30 days of the
date the Department issued its Final Report; and

1 c. Respondent was required to file this information within 30 days of the
2 Department's April 10, 2002 letter.

3 31. Respondent did not provide the requested information to the Department until
4 *after* the Department ordered Respondent to do so by subpoena duces tecum issued
5 September 6, 2002.

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7 **DISCIPLINARY CONSIDERATIONS**

8 32. The Director has the discretion, pursuant to the provisions of Health and
9 Safety Code section 1386, subdivision (a), to assess administrative penalties and/or to
10 suspend or revoke the license of a health care service plan for violations of the Act.

11 33. In seeking an assessment of an administrative penalty of \$7,500.00 against the
12 Respondent in this action, the Complainant has considered that Respondent violated the
13 express provisions of Health and Safety Code section 1352, subdivision (a) and California
14 Code of Regulations, title 28, section 1300.51 Exhibit F-2 when it failed to file its contract
15 with SFM with the Department within 30 days of entering into the contract.

16 34. Complaint also considered that Respondent intentionally violated the express
17 provisions of California Code of Regulations, title 28, section 1300.82 when it intentionally
18 disregarded the Department's three separate requests for the date Respondent filed its
19 agreement with General Electric during the Department's 2000 financial examination.

20 35. Finally, Complainant considered that Respondent failed to provide its contract
21 with SFM to the Department, until the Department ordered it to do so by subpoena duces
22 tecum.

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1 **PRAYER**


2 **THEREFORE**, Complainant prays that the Director assess an administrative penalty
3 in the amount of \$7,500.00 against the Respondent for the commission of its violation of
4 Health and Safety Code, section 1352 and California Code of Regulations, title 28, sections
5 1300.51 Exhibit F-2 and 1300.82, as alleged in this Accusation.

6 **THEREFORE**, Complainant also prays for such other and further relief, as the
7 Director deems proper.

8 DATED: January 20, 2004

G. LEWIS CHARTRAND
General Counsel
Department of Managed Health Care

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11 By:


ELLEN J. RIDDELL
Senior Counsel
Office of Enforcement